

Proposed Regulation 19041  
March 3, Symposium  
Matrix of Suggested Alternative Language

	Sub-division	Staff	Alternative
1	(a)(1)	A taxpayer has the right to file a protest with respect to a deficiency proposed to be assessed by a Notice of Proposed Assessment. The department shall review and act upon the protest based upon a determination of whether the proposed deficiency is correct, in whole or in part. This regulation sets forth and makes specific the rules for filing, considering and determining a protest.	A taxpayer has the right to file a protest with respect to a deficiency proposed to be assessed by a Notice of Proposed Assessment. <b>The taxpayer has the right to a copy of the audit file upon request without having to file a Public Records Act request. Within 60 days of a written request by the taxpayer, the FTB shall provide the legal and factual basis (reasons) for the Notice of Proposed Assessment as well as the scheduled (computations) supporting the Notice of Proposed Assessment unless both are included in the Notice of Proposed Assessment.</b> The department shall review and act upon the protest based upon a determination of whether the proposed deficiency is correct, in whole or in part. This regulation sets forth and makes specific the rules for filing, considering and determining a protest.
2	(a)(2)	The protest process is intended to be informal. It is the first step in the administrative and judicial review process where the taxpayer can dispute proposed adjustments to increase or determine the taxpayer's tax for a particular year. It provides an opportunity for a staff member of the Franchise Tax Board and the taxpayer to discuss the issues <b>involved and to make sure that all of the necessary facts to resolve the protest have been presented.</b> The protest hearing process is not subject to the requirements of the administrative adjudication provisions of the Administrative Procedures Act, sections 11400, et seq., of the California Government Code. Subsequent proceedings in the administrative and judicial review process are more formal. These subsequent proceedings involve adjudicative bodies	The protest process is intended to be informal. It is the first step in the administrative and judicial review process where the taxpayer can dispute proposed adjustments to increase or determine the taxpayer's tax for a particular year. It provides an opportunity for a staff member of the Franchise Tax Board and the taxpayer to discuss the issues <b>relating to the proposed assessment as well as any issues raised by the taxpayer.</b> The protest hearing process is not subject to the requirements of the administrative adjudication provisions of the Administrative Procedures Act, sections 11400, et seq., of the California Government Code. Subsequent proceedings in the administrative and judicial review process are more

		other than the Franchise Tax Board. In these proceedings the evidence admitted and the testimony given become part of the formal record of the proceedings maintained by the adjudicative body. Evidence submitted at the protest level does not become part of any formal record and is not forwarded automatically to any other administrative or judicial body for purposes of that body making a determination on the merits of any case. Taxpayers, and the Franchise Tax Board, must present all evidence directly to those adjudicative bodies in accordance with the rules of that body if they wish such evidence to be considered.	formal. These subsequent proceedings involve adjudicative bodies other than the Franchise Tax Board. In these proceedings the evidence admitted and the testimony given become part of the formal record of the proceedings maintained by the adjudicative body. Evidence submitted at the protest level does not become part of any formal record and is not forwarded automatically to any other administrative or judicial body for purposes of that body making a determination on the merits of any case. Taxpayers, and the Franchise Tax Board, must present all evidence directly to those adjudicative bodies in accordance with the rules of that body if they wish such evidence to be considered.
3a	(a)(3)	The staff member of the Franchise Tax Board handling the protest is charged with the responsibility of making a determination <b>of the correct amount of tax</b> based upon the facts of the case and a correct application of the law to those facts. The protest process is not a negotiation where disagreements are compromised. There is a separate Administrative Settlement process which allows for taxpayers and the Franchise Tax Board to reach an agreement as to the settlement of a dispute based upon the various risks that are involved. See Revenue and Taxation Code section 19442.	The staff member of the Franchise Tax Board handling the protest is charged with the responsibility of making a determination <b>that the assessment proposed by the auditor is</b> correct based upon the facts of the case and a correct application of the law to those facts. The protest process is not a negotiation where disagreements are compromised. There is a separate Administrative Settlement process which allows for taxpayers and the Franchise Tax Board to reach an agreement as to the settlement of a dispute based upon the various risks that are involved. See Revenue and Taxation Code section 19442.
3b	(a)(3)	The staff member of the Franchise Tax Board handling the protest is <b>charged with the responsibility of making a determination of the correct amount of tax based upon the facts of the case and a correct application of the law to those facts.</b> The protest process is not a negotiation where disagreements are compromised. There is a separate Administrative Settlement process which allows for taxpayers and the Franchise Tax Board to reach an agreement as to the settlement of a dispute based upon the various risks that are involved. See Revenue and Taxation Code section 19442.	The <b>role of the</b> staff member of the Franchise Tax Board handling the protest is <b>to objectively resolve the protested tax assessment in accordance with the Taxpayers' Bill of Rights and the Franchise Tax Board's Statement of Principles of Tax Administration through an analysis of the relevant code and case law as applied to the facts relevant to the protest. While an objective analysis should include an independent review of the audit file, it does not include a new examination, the raising of any issues not adjusted in the NPA, or re-audit of</b>

			<p><b>the taxpayer's books and records.</b> The protest process is not a negotiation where disagreements are compromised. There is a separate Administrative Settlement process which allows for taxpayers and the Franchise Tax Board to reach an agreement as to the settlement of a dispute based upon the various risks that are involved. See Revenue and Taxation Code section 19442.</p>
4a	(a)(5)	<p>In most circumstances, the Franchise Tax Board will only be in possession of facts which have been supplied by the taxpayer. Not all of the facts may have been made available prior to the issuance of the Notice of Proposed Assessment. The taxpayer has the burden of establishing error in the proposed assessment of tax. It is the taxpayer that will be in possession or control of the necessary information, documents, books and records and who will have the knowledge regarding the circumstances of the relevant activities such that a determination of the correct tax can be made. The inability, or failure, of a taxpayer to supply information can result in a proposed assessment being sustained. The Franchise Tax Board is entitled to conclude that the failure to produce information gives rise to an inference that the information if provided would support the proposed assessment.</p>	<p>In most circumstances, the Franchise Tax Board will only be in possession of facts which have been supplied by the taxpayer. Not all of the facts may have been made available prior to the issuance of the Notice of Proposed Assessment. The taxpayer has the burden of establishing error in the proposed assessment of tax. It is the taxpayer that will be in possession or control of the necessary information, documents, books and records and who will have the knowledge regarding the circumstances of the relevant activities such that a determination of the correct tax can be made. The inability, or failure, of a taxpayer to supply information <b>that was requested, but not provided during the audit</b> can result in a proposed assessment being sustained. The Franchise Tax Board is entitled to conclude that the failure to produce information gives rise to an inference that the information if provided would support the proposed assessment. <b>However, the taxpayer is not required to create documents that never existed in its accounting records and no inference shall be drawn from the fact that the taxpayer never maintained records requested by the Franchise Tax Board. It is the responsibility of the taxpayer to inform the Franchise Tax Board if any requested information does not exist.</b></p>
4b	(a)(5)	<p>In most circumstances, the Franchise Tax Board will only be in possession of facts which have been supplied by the taxpayer. <b>Not all of the facts may have been made</b></p>	<p>In most circumstances, the Franchise Tax Board will only be in possession of facts which have been supplied by the taxpayer <b>or discovered during an audit.</b> The</p>

		<p><b>available prior to the issuance of the Notice of Proposed Assessment.</b> The taxpayer has the burden of establishing error in the proposed assessment of tax. It is the taxpayer that will be in possession or control of the necessary information, documents, books and records and who will have the knowledge regarding the circumstances of the relevant activities such that a determination of the correct tax can be made. The inability, or failure, of a taxpayer to supply information can result in a proposed assessment being sustained. <b>The Franchise Tax Board is entitled to conclude that the failure to produce information gives rise to an inference that the information if provided would support the proposed assessment</b></p>	<p>taxpayer has the burden of establishing error in the proposed assessment of tax. It is the taxpayer that will be in possession or control of the necessary information, documents, books and records and who will have the knowledge regarding the circumstances of the relevant activities such that a determination of the correct tax can be made. The inability, or failure, of a taxpayer to supply <b>relevant information in support of their protest may</b> result in a proposed assessment being sustained. <b>However, it is not necessary that the taxpayer create documents that never existed in its records and no inference shall be drawn from the fact that the taxpayer never maintained records requested by the Franchise Tax Board if any requested information does not exist.</b></p>
5	(b)5)		<p><b>Upon showing of reasonable cause for failure to file a timely protest (such as being out of the country during the time of the notice), the department may allow a late filing of a protest.</b></p>
6	(b)(6)		<p><b>Acknowledgment of Protest: Upon receipt of the protest, the department, shall within 30 days, send an acknowledgment that the protest has been received and identify the staff member of the department handing the protest.</b></p>
7a	(c)	<p>Manner of Filing. A protest is normally filed by mailing it to the address that appears on the reverse side of the Notice of Proposed Assessment. A protest may also be filed by hand-delivering it to an office of the Franchise Tax Board.</p>	<p>Manner of Filing. A protest is normally filed by mailing it to the address that appears on the reverse side of the Notice of Proposed Assessment. <b>The Franchise Tax Board will post the current address on its web site at <a href="http://www.ftb.ca.gov/legal">www.ftb.ca.gov/legal</a>.</b> A protest may also be filed by hand-delivering it to an office of the Franchise Tax Board.</p>
7b	(c)	<p>Manner of Filing. A protest <b>is normally</b> filed by mailing it to the address that appears on the reverse side of the Notice of Proposed Assessment. <b>A protest may also be filed</b> by hand-delivering it to an office of the Franchise Tax Board</p>	<p>Manner of Filing. A protest <b>may be</b> filed <b>either</b> by mailing it to the address that appears on the reverse side of the Notice of Proposed Assessment <b>or</b> by hand-delivering it to an office of the Franchise Tax Board</p>
8	(d)(3)	<p>A request for an oral hearing on the protest <b>must</b> be</p>	<p>A request for an oral hearing on the protest <b>should</b> be</p>

		expressly stated and <b>must</b> be included as part of the protest. <b>The right to an oral hearing is waived if a request is not included in the protest; however, the department may at its discretion grant an oral hearing requested after the protest has been filed. See Regulation section 19044.</b>	expressly stated and <b>should</b> be included as part of the protest. <b>However, the taxpayer will be granted an oral hearing if it is requested at any time prior to the issuance of a Notice of Action on the protest by the department.</b>
9	(d)(5)	<b>Grounds and Reasons.</b> The protest must specify the grounds upon which it is based, <b>set forth the facts involved, and the reason(s) why the proposed assessment is in error.</b> See subsection (e) of this regulation for rules relating to grounds.	Grounds. The protest must specify the grounds upon which it is based. See subsection (e) of this regulation for rules relating to grounds.
10	(d)(6)	<b>Legal Authorities.</b> The protest should include any legal authorities relied upon by the taxpayer(s), including relevant statutes, regulations, rulings, and administrative or judicial decisions	<b>Reasons and Legal Authorities.</b> The protest should include <b>the reason(s) why the proposed assessment is in error</b> , any legal authorities relied upon by the taxpayer(s), including relevant statutes, regulations, rulings, and administrative or judicial decisions
11a	(e)(2)	Limited to Grounds in Protest Letter. Except as otherwise provided in this regulation, a protest shall be limited to the grounds set forth in the protest letter. The department shall have the discretion to inquire into or allow the introduction of new, additional or alternative grounds to determine whether the proposed assessment is correct in whole or in part. The department's discretion in this regard shall be liberally construed with the view to allowing the taxpayer to present new grounds consistent with timely and efficient tax administration	<b>Delete</b>
11b	(e)(2)	Limited to Grounds in Protest Letter. <b>Except as otherwise provided in this regulation, a protest shall be limited to the grounds set forth in the protest letter. The department shall have the discretion to inquire into or allow the introduction of</b> new, additional or alternative grounds to determine whether the proposed assessment is correct in whole or in part. <b>The department's discretion in this regard shall be liberally construed with the view to allowing the taxpayer to present new grounds consistent with timely and efficient tax administration.</b>	<b>Not Limited to Grounds in Protest Letter. A taxpayer may introduce</b> new, additional or alternative grounds to determine whether the proposed assessment is correct in whole or in part <b>until the issuance of the Notice of Proposed Action. The department's discretion in this regard shall be liberally construed with the view to allowing the taxpayer to present new grounds consistent with timely and efficient tax administration.</b>

12	(e)(4)(A)	<p><b>The department shall accept a request to amend the protest to set forth new, additional or alternative grounds if:</b></p> <p><b>1.it is part of the response to a request by the department to perfect a protest pursuant to subsection (f)(3) of this regulation, or to provide additional information or authorities pursuant to subsection (g) of this regulation; or</b></p> <p><b>2.it is mailed or delivered at least fourteen (14) days prior to the date of the first scheduled oral hearing on the protest, if an oral hearing has been requested.</b></p> <p><b>The department, at its discretion, may grant a request to amend the protest when:</b></p> <p><b>1.in the case of a taxpayer that has requested an oral hearing, the request is submitted less than 14 days prior to the first scheduled oral hearing or prior to any subsequent oral hearing.</b></p> <p><b>2.in the case of a taxpayer who has not requested an oral hearing, the request is received by the department prior to the date a Notice of Action on the protest was issued.</b></p> <p><b>3.the taxpayer shows reasonable or good cause for allowing an amendment.</b></p> <p>(C)A taxpayer submitting a new, additional or alternative ground must provide facts and authorities in support of the ground with the request.</p> <p>(D)The department's discretion in this respect shall be exercised liberally with the view to allowing the taxpayer to present new, additional, or alternative grounds consistent</p>	<p>A taxpayer submitting a new, additional or alternative ground must provide facts and authorities in support of the ground with the request</p> <p><b>If a taxpayer introduces new, additional or alternative grounds at the hearing, the department is entitled to a 45-day postponement of the hearing to review the material. If the new, additional or alternative grounds are introduced within 45-days of the hearing, the department may ask for a postponement of the hearing until not later than 45-days subsequent to the introduction of the new, additional or alternative grounds.</b></p>
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		with timely and efficient tax administration.	
13	(f)(1)	A protest that does not contain all of the information required by subsections (2), (4), and (5) of subsection (d) of this regulation must be perfected or it is not a valid protest.	A protest that does not contain all of the information required by subsections (2), (4), and (5) of subsection (d) of this regulation must be perfected or it is not a valid protest. <b>No other requirements must be met for a valid protest.</b>
14	(f)(2)(A)	A taxpayer who has not requested an oral hearing <b>in the original protest</b> may perfect a timely filed protest by submitting any missing information. Submission must be within 60 days of the filing date of the protest	A taxpayer who has not requested an oral hearing may perfect a timely filed protest by submitting any missing information. Submission must be within 60 days of the filing date of the protest
15	(f)(3)(C)	A period <b>of thirty</b> days after the notice described in (B) of this subsection is mailed <b>will be presumed to be sufficient time to perfect a protest.</b> An extension of 15 days will be granted if requested prior to the expiration of the 30 days. One additional extension of time of 15 days to perfect a protest may be granted in extraordinary circumstances, if requested prior to the expiration of the 15-day extension. The granting of an additional extension is at the discretion of the department. A taxpayer has the burden of establishing why any additional time to perfect the protest is necessary.	A <b>protest shall be perfected by the latter date of the protest hearing or</b> thirty days after the notice described in (B) of this subsection is mailed. An extension of 15 days will be granted if requested prior to the expiration of the 30 days. One additional extension of time of 15 days to perfect a protest may be granted in extraordinary circumstances, if requested prior to the expiration of the 15-day extension. The granting of an additional extension is at the discretion of the department. A taxpayer has the burden of establishing why any additional time to perfect the protest is necessary. <b>In no event, however, will the due date for perfecting a protest be less than 60 days from the date the taxpayer or its representative have actually received a full and complete copy of the FTB's audit file if the taxpayer has requested the file prior to the issuance of the notice described in subsection (B) of this subsection.</b>
16a	(g)(1)	In order to make its determination with respect to the protest, the <b>department</b> may request <b>additional</b> information or authorities regarding the grounds raised in the protest. A request for <b>additional</b> information or authorities may be made either in writing or during the course of an oral hearing. See Regulation section 19044(h)(9).	In order to make its determination with respect to the protest, the <b>staff member of the Franchise Tax Board</b> may request <b>any</b> information <b>that was requested, but not provided during the audit</b> or authorities regarding the grounds raised in the protest. A request for information <b>that was requested, but not provided during the audit</b> or authorities may be made either in writing or during the course of an oral hearing. <b>At the</b>

			<b>taxpayer's request, a written request will be provided for information requested during an oral hearing.</b> See Regulation section 19044(h)(9).
16b	(g)(1)	In order to make its determination with respect to the protest, the department may request additional information <b>or authorities</b> regarding <b>the</b> grounds raised in the protest. A request for additional information or authorities may be made either in writing or during the course of an oral hearing. See Regulation section 19044(h)(9).	In order to make its determination with respect to the protest, the department may request additional <b>relevant</b> information regarding <b>any new or additional</b> grounds raised in the protest. A request for additional information or authorities may be made either in writing or during the course of an oral hearing. See Regulation section 19044(h)(9). <b>At the taxpayer's request, a written request will be provided for any information requested.</b>
17a	(g)(2)	A taxpayer, or the taxpayer's representative, has the duty to make a timely <b>and complete</b> response to any requests <b>additional</b> information or authorities by the department pursuant to subsection (1) above.	A taxpayer, or the taxpayer's representative, has the duty to make a timely response to any requests for <b>any information that was requested, but not provided during the audit</b> or authorities by the department pursuant to subsection (1) above.
17b	(g)(2)	<p>Duty to Respond. A taxpayer, or the taxpayer's representative, has the duty to make a timely and complete response to any requests for additional information or authorities by the department pursuant to subsection (1) above.</p> <p>Time for Response. A request for additional information or authorities by the department shall include a due date for a timely response. The period for response shall not be less than 30 days from the date of the request unless otherwise agreed to by the taxpayer, or the taxpayer's representative, and the department.</p> <p>Extensions. One extension of time to submit the requested information or authorities will be granted if requested. The period of extension shall not be less than one half the period of time allowed for response in subsection (A) above.</p>	<b>Delete</b>



		Additional Time. In its discretion, the department may grant extensions of time to respond in addition to the periods provided for in subsection (B) above.	
18	(g)(2)(A)	A request for additional information or authorities by the department shall include a due date for a timely response. The period for response shall <b>not be less than 30</b> days from the date of the request unless otherwise agreed to by the taxpayer, or the taxpayer's representative, and the department.	A request for additional information or authorities by the department shall include a due date for a timely response. The period for response shall be <b>60</b> days from the date of the request unless otherwise agreed to by the taxpayer, or the taxpayer's representative, and the department.
19	(g)(2)(B)	One extension of time to submit the requested information or authorities will be granted if requested. The period of extension shall not be less than one half the period of time allowed for response in subsection (A) above.	One extension of time <b>for a period of an additional 30 days</b> to submit the requested information or authorities will be granted if requested.
20	(g)(2)(C)	In its discretion, the department may grant extensions of time to respond in addition to the periods provided for in subsection (B) above.	In its discretion <b>and only with the approval of the Chief Counsel of the Assistant Executive Officer of the Audit Branch</b> , the department may grant extensions of time to respond in addition to the periods provided for in subsection (B) above.
21	(g)(3)	<p>Failure to provide a timely and complete response to a request from the department for additional information or authorities may result in the protest being determined by resolving questions of fact to which the requests relate against the taxpayer. In addition, failure to provide a timely and complete response may give rise to an assertion by the department that the taxpayer has failed to exhaust administrative remedies in subsequent administrative or judicial proceedings. For purposes of this subsection, a written statement by the taxpayer that information requested does or did not exist will be considered a complete response.</p> <p>The department will advise a taxpayer of its determination that the taxpayer has failed to respond or has failed to provide an adequate response. The department will specifically advise the taxpayer of the extent to which it has determined that the response is inadequate. The taxpayer</p>	<b>Delete</b>

		will be given 30 days to make the response adequate.	
22	(g)(3)(A)	Failure to provide a timely and complete response to a request from the department for <b>additional information</b> or authorities may result in the protest being determined by resolving questions of fact to which the requests relate against the taxpayer. In addition, failure to provide a timely and complete response may give rise to an assertion by the department that the taxpayer has failed to exhaust administrative remedies in subsequent administrative or judicial proceedings. For purposes of this subsection, a written statement by the taxpayer that information requested does or did not exist will be considered a complete response.	Failure to provide a timely and complete response to a request from the department for <b>any information that was requested, but not provided during the audit</b> or authorities may result in the protest being determined by resolving questions of fact to which the requests relate against the taxpayer. In addition, failure to provide a timely and complete response may give rise to an assertion by the department that the taxpayer has failed to exhaust administrative remedies in subsequent administrative or judicial proceedings. For purposes of this subsection, a written statement by the taxpayer that information requested does or did not exist will be considered a complete response.
23	(h)(1)	The department shall provide to the taxpayer, or the taxpayer's representative, a written Notice of Action setting forth the determination that has been made with respect to the protest. If an oral hearing had been requested on the protest, the department shall also provide the taxpayer, or the taxpayer's representative, with a letter setting forth its determination, unless the receipt of a separate letter is waived in writing or orally. If a letter of determination has been sent to the taxpayer, or the taxpayer's representative, setting forth the basis of the determination, the Notice of Action issued with respect to the protest may set forth the determination by reference to the letter. A taxpayer may appeal the department's determination on its protest, as reflected on the Notice of Action, to the California State Board of Equalization within the time limits provided by the Revenue and Taxation Code. See Revenue and Taxation Code sections 19045 and 19324, and the regulations adopted thereunder.	The department shall provide to the taxpayer, or the taxpayer's representative, a written Notice of Action setting forth the determination that has been made with respect to the protest. If an oral hearing had been requested on the protest, the department shall also provide the taxpayer, or the taxpayer's representative, with a letter setting forth its determination, unless the receipt of a separate letter is waived in writing or orally. If a letter of determination has been sent to the taxpayer, or the taxpayer's representative, setting forth <b>in detail the legal and factual</b> basis of the determination, the Notice of Action issued with respect to the protest may set forth the determination by reference to the letter. A taxpayer may appeal the department's determination on its protest, as reflected on the Notice of Action, to the California State Board of Equalization within the time limits provided by the Revenue and Taxation Code. See Revenue and Taxation Code sections 19045 and 19324, and the regulations adopted thereunder.
24	(h)(2)(A)	If an oral hearing has been requested on the protest, the	If an oral hearing has been requested on the protest, the

		Franchise Tax Board shall provide the taxpayer, or the taxpayer's representative, with a letter setting forth its determination within 60 days of the final oral hearing on the matter. The subsequent written Notice of Action shall be issued within 60 days of the Letter of Determination.	Franchise Tax Board shall provide the taxpayer, or the taxpayer's representative, with a letter setting forth its determination within 60 days of the final oral hearing on the matter. The subsequent written Notice of Action shall be issued within 60 days of the Letter of Determination. <b>If the department fails to issue the Letter of Determination with the prescribed time, the NPA shall be deemed void.</b>
25	New (h)(2)(C)	If an oral hearing has been requested on the protest, the Franchise Tax Board shall provide the taxpayer, or the taxpayer's representative, with a written Notice of Action setting forth the determination that has been made with respect to the protest within <b>33</b> months of the filing of the protest or the date on which the protest is perfected under subsection (f) of this regulation.	If an oral hearing has been requested on the protest, the Franchise Tax Board shall provide the taxpayer, or the taxpayer's representative, with a written Notice of Action setting forth the determination that has been made with respect to the protest within <b>30</b> months of the filing of the protest or the date on which the protest is perfected under subsection (f) of this regulation.
26a	New (h)(2) (D)1	the years involved in the protest remain subject to audit or reaudit because the taxpayer has not supplied requested information at audit, the Notice of Proposed Assessment was issued because of an impending expiration of the statute of limitations, or the protest raises issues that were not considered during the audit;	<b>Delete</b>
26b	(h)(2) (D)1	the years involved in the protest remain subject to audit or reaudit because the taxpayer has not supplied requested information at audit, the Notice of Proposed Assessment was issued because of an impending expiration of the statute of limitations, <b>or the protest raises issues that were not considered during the audit;</b>	the years involved in the protest remain subject to audit or reaudit because the taxpayer has not supplied requested information at audit, the Notice of Proposed Assessment was issued because of an impending expiration of the statute of ;
27	New (h)(2) (D)2	new issues were raised subsequent to the filing of the protest that the Franchise Tax Board determines should be resolved at the protest level;	<b>Delete</b>

Proposed Regulation 19044  
March 3, Symposium  
Matrix of Suggested Alternative Language

	Sub-division	Staff	Alternative
1	(a)(1)	A taxpayer has a right to have an oral hearing on a protest. There is no requirement that an oral hearing be held on a protest, except as requested by the taxpayer. This regulation describes the mechanics of requesting and scheduling an oral hearing, the nature and manner in which the oral hearing is conducted, and the rights and obligations of the taxpayer in regard to an oral hearing.	A taxpayer has a right to have an oral hearing on a protest. There is no requirement that an oral hearing be held on a protest, except as requested by the taxpayer. <b>While a request for an oral hearing should be included as part of the original protest, the taxpayer may nevertheless request and will be granted an oral hearing at any time prior to the issuance of a Notice of Action by the department.</b> This regulation describes the mechanics of requesting and scheduling an oral hearing, the nature and manner in which the oral hearing is conducted, and the rights and obligations of the taxpayer in regard to an oral hearing.
2a	(a)(3)	The hearing officer of the Franchise Tax Board is charged with the responsibility of making a determination of <b>the correct amount of tax</b> based upon facts of the case and a correct application of the law to those facts. The protest hearing process is not a negotiation where disagreements are compromised. There is a separate Administrative Settlement process which allows for taxpayers and the Franchise Tax Board to reach an agreement as to the settlement of a dispute based upon the various risks that are involved. See Revenue and Taxation Code section 19442.	The hearing officer of the Franchise Tax Board is charged with the responsibility of making a determination of <b>whether the assessment proposed by the auditor is</b> correct based upon facts of the case and a correct application of the law to those facts. The protest hearing process is not a negotiation where disagreements are compromised. There is a separate Administrative Settlement process which allows for taxpayers and the Franchise Tax Board to reach an agreement as to the settlement of a dispute based upon the various risks that are involved. See Revenue and Taxation Code section 19442.
2b	(a)(3)	The hearing officer of the Franchise Tax Board is <b>charged with the responsibility of making a determination of the correct amount of tax based upon facts of the case and a correct application of the law to those facts.</b> The	The <b>role of the</b> hearing officer of the Franchise Tax Board is <b>to objectively resolve the protested tax assessment in accordance with the Taxpayers' Bill of Rights and the Franchise Tax Board's Statement</b>

		<p>protest hearing process is not a negotiation where disagreements are compromised. There is a separate Administrative Settlement process which allows for taxpayers and the Franchise Tax Board to reach an agreement as to the settlement of a dispute based upon the various risks that are involved. See Revenue and Taxation Code section 19442.</p>	<p><b>of Principles of Tax Administration through an analysis of the relevant code and case law as applied to the facts relevant to the protest. While an objective analysis should include an independent review of the audit file, it does not include a new examination, the raising of new issues not adjusted in the NPA, or re-audit of the taxpayer's books and records.</b> The protest hearing process is not a negotiation where disagreements are compromised. There is a separate Administrative Settlement process which allows for taxpayers and the Franchise Tax Board to reach an agreement as to the settlement of a dispute based upon the various risks that are involved. See Revenue and Taxation Code section 19442.</p>
3	(a)(4)	<p>The regulation sets forth specific rules that govern the protest hearing process based upon the language of the statute. The regulation provides a number of specific rules and time limits, with specific exceptions. <b>These rules, time limits and exceptions are provided for the protection of taxpayers. They are intended to inform taxpayers of their rights and provide protections in a number of circumstances. In virtually every situation, the Franchise Tax Board is provided the discretion to waive rules or grant extensions.</b> It is the goal of the Franchise Tax Board to resolve disputes with taxpayers concerning their tax liability at the lowest level possible in the administrative process, and the Franchise Tax Board will liberally exercise its discretion in all areas provided for in the regulation with this goal in mind.</p>	<p>The regulation sets forth specific rules that govern the protest hearing process based upon the language of the statute. The regulation provides a number of specific rules and time limits, with specific exceptions. It is the goal of the Franchise Tax Board to resolve disputes with taxpayers concerning their tax liability at the lowest level possible in the administrative process, and the Franchise Tax Board will liberally exercise its discretion in all areas provided for in the regulation with this goal in mind.</p>
4a	(b)(1)	<p>If the taxpayer wishes to have an oral hearing on a protest, a request for oral hearing must be included in the original protest. <b>If a request for an oral hearing is not made in the original protest, the taxpayer's right to an oral hearing is waived.</b> The failure to request an oral hearing will not be asserted by the Franchise Tax Board as a failure</p>	<p>If the taxpayer wishes to have an oral hearing on a protest, a request for oral hearing <b>should</b> be included in the original protest. <b>However, the taxpayer will be granted an oral hearing if it is requested at any time prior to issuance of a Notice of Action on the protest by the department.</b> If a request for an oral</p>

		to exhaust administrative remedies in any subsequent administrative or judicial proceedings. <b>The department may grant an oral hearing though not requested in the original protest. See subsection (b)(2) of this regulation and subsection (d)(3) of Regulation 19041. A taxpayer may not perfect, amend or supplement an original protest to request an oral hearing.</b>	hearing is not made in the original protest, the taxpayer's right to an oral hearing is waived. The failure to request an oral hearing will not be asserted by the Franchise Tax Board as a failure to exhaust administrative remedies in any subsequent administrative or judicial proceedings.
4b	(b)(1)	If the taxpayer wishes to have an oral hearing on a protest, a request for oral hearing <b>must be included in the original protest</b> . If a request for an oral hearing is not made <b>in the original protest</b> , the taxpayer's right to an oral hearing is waived. The failure to request an oral hearing will not be asserted by the Franchise Tax Board as a failure to exhaust administrative remedies in any subsequent administrative or judicial proceedings. <b>The department may grant an oral hearing though not requested in the original protest. See subsection (b)(2) of this regulation and subsection (d)(3) of Regulation 19041. A taxpayer may not perfect, amend or supplement an original protest to request an oral hearing.</b>	If the taxpayer wishes to have an oral hearing on a protest, a request for oral hearing <b>may be made at any time prior to the issuance of the Notice of Action</b> . If a request for an oral hearing is not made <b>prior to the issuance of the Notice of Action</b> , the taxpayer's right to an oral hearing is waived. The failure to request an oral hearing will not be asserted by the Franchise Tax Board as a failure to exhaust administrative remedies in any subsequent administrative or judicial proceedings.
5	(b)(2)	<p>The department may grant a taxpayer's request for an oral hearing that is made subsequent to the filing of the protest.</p> <p>The department shall be liberal in granting a taxpayer's request for an oral hearing that is made subsequent to the filing of the protest consistent with the timely and efficient completion of the protest process.</p> <p>The department shall grant a request for an oral hearing that was not contained in a protest whenever the department requests additional information (see Regulation 19041, subsection (g)) if the request for an oral hearing is made in conjunction with or prior to the date set for a timely response to the request for information</p>	<b>Delete</b>

6	(b)(3)	A taxpayer is entitled to only one oral hearing. Additional oral hearing(s) may be scheduled whenever the department determines that an additional hearing is appropriate.	A taxpayer is entitled to only one oral hearing. Additional oral hearing(s) may be scheduled whenever the department determines that an additional hearing is appropriate. <b>The department shall be liberal in granting additional hearings consistent with the timely and efficient completion of the protest process.</b>
7	(c)(1)	A taxpayer is entitled to <b>request</b> an oral hearing at an office of the department that is convenient to the taxpayer. (Section 21011(a), Revenue and Taxation Code.) <b>When possible, the department shall grant such requests.</b>	A taxpayer is entitled to an oral hearing at an office of the department that is convenient to the taxpayer. (Section 21011(a), Revenue and Taxation Code.)
8	(c)(2)	If it is not possible to schedule an oral hearing at an office of the department that is convenient to the taxpayer, the location of the hearing shall be determined by the department. If an office of the department is not convenient to the taxpayer, oral hearings may be held by telephone, videoconferencing or similar means at the taxpayer's request.	<b>Delete</b>
9	(d)(1)	Hearing will be scheduled as soon as possible after the filing of the protest. Factors to be taken into consideration in the scheduling of an oral hearing include the workload of the department, the schedule of the hearing officer, the schedule of the taxpayer or the taxpayer's representative, <b>and the amount of further development of the protest that the hearing officer determines is necessary.</b> Time limits provided in subsection (d) of this regulation shall be used as guidelines for a quick and orderly processing of the protest; however, the Franchise Tax Board, at its discretion, may vary these time limits in order to address various circumstances which warrant such changes.	Hearing will be scheduled as soon as possible after the filing of the protest. Factors to be taken into consideration in the scheduling of an oral hearing include the workload of the department, the schedule of the hearing officer, the schedule of the taxpayer or the taxpayer's representative. Time limits provided in subsection (d) of this regulation shall be used as guidelines for a quick and orderly processing of the protest; however, the Franchise Tax Board, at its discretion, may vary these time limits in order to address various circumstances which warrant such changes.
10	(d)(3)	Hearings shall be scheduled Monday through Friday during normal business hours for the office where the hearing is to be held (generally between 8:00 a.m. and 4:30 p.m.). The length of time available for an oral hearing is limited and the taxpayer, or the taxpayer's representative, shall advise the hearing officer of the length of time the hearing is expected	Hearings shall be scheduled Monday through Friday during normal business hours for the office where the hearing is to be held (generally between 8:00 a.m. and 4:30 p.m.). <b>Upon request of the taxpayer, a hearing shall be scheduled after normal business hours or on a Saturday but no later than 9:00 p.m. Monday</b>

		to take.	<b>through Friday or on Saturday between 8:00 a.m. and 12: p.m. (noon).</b> The length of time available for an oral hearing <b>may be</b> limited and the taxpayer, or the taxpayer's representative, shall advise the hearing officer of the length of time the hearing is expected to take.
11	(f)(3)		<b>The hearing officer shall be from the taxpayer rights office or a separate protest unit and shall not be from the department's legal or audit section on loan to the taxpayer rights office or a separate protest unit.</b>
12	(h)(4)	A taxpayer may designate a person or persons, as the case may be, to represent the taxpayer at the hearing. The hearing officer may limit the number of representatives for the taxpayer at a protest hearing. <b>More than one active representative will be allowed at the hearing if in the hearing officer's judgment this does not cause a disruption of the hearing.</b>	A taxpayer may designate a person or persons, as the case may be, to represent the taxpayer at the hearing. The hearing officer may <b>not</b> limit the number of representatives for the taxpayer at a protest hearing <b>except that the hearing officer may terminate the hearing as provided for under subsection (h)(10) below.</b>
13	(h)(5)(A)	No one other than the taxpayer, persons authorized by the taxpayer, and staff of the department is permitted to attend an oral hearing.	No one other than the taxpayer, persons authorized by the taxpayer, and staff of the <b>protest unit within the</b> department are permitted to attend an oral hearing.
14	(h)(5)(B)	Observers, other than staff of the department, are not allowed at hearings unless the taxpayer expressly consents to their presence and there is sufficient space in the room in which the hearing is being held to accommodate them. Written confirmation of consent may be required.	Observers, other than staff of the <b>protest unit of the</b> department, are not allowed at hearings unless the taxpayer expressly consents to their presence and there is sufficient space in the room in which the hearing is being held to accommodate them. Written confirmation of consent may be required.
15	(h)(6)	Official Record or Transcript. Except as otherwise provided in subsection (h)(7) of this regulation, the department does not record or prepare a transcript of hearings. An official record of documents submitted or statements made during the course of an oral hearing is not maintained. Any subsequent proceedings, whether before the Board of	Official Record or Transcript. Except as otherwise provided in subsection (h)(7) of this regulation, the department does not record or prepare a transcript of hearings. <b>Taxpayer, however, may arrange for a transcript to be created of the hearing, but shall bear the costs thereof.</b> An official record of



		Equalization or in the courts, proceed on the basis of the record made in those proceedings. Information and other materials supplied during the protest process are not part of the record of those proceedings unless submitted by one of the parties in the course of such proceedings.	documents submitted or statements made during the course of an oral hearing is not maintained <b>by the department</b> . Any subsequent proceedings, whether before the Board of Equalization or in the courts, proceed on the basis of the record made in those proceedings. Information and other materials supplied during the protest process are not part of the record of those proceedings unless submitted by one of the parties in the course of such proceedings.
16	(h)(8)(A)3	The department is not required to issue subpoenas on behalf of a taxpayer to compel witnesses to appear at an oral hearing.	The department is not required to issue subpoenas on behalf of a taxpayer to compel witnesses to appear at an oral hearing <b>except that the department shall, at the request of the taxpayer, have the auditor or auditors of the taxpayers' return available to answer questions or provide testimony that may be relevant to the protest. Such a request by the taxpayer for the presence and testimony of the department personnel shall be made one week in advance of the oral hearing.</b>
17	(h)(8)(B)1	Except as otherwise provided in subsection (h)(9) of this regulation, with respect to testimony contained in a recording, a copy of any documentary evidence offered in support of the taxpayer's position shall be supplied to the hearing officer at, or prior to, the hearing. The department <b>may, but is not</b> required to, retain such documentary evidence for its files.	Except as otherwise provided in subsection (h)(9) of this regulation, with respect to testimony contained in a recording, a copy of any documentary evidence offered in support of the taxpayer's position shall be supplied to the hearing officer at, or prior to, the hearing. The department is required to retain such documentary evidence for its files.
18a	(h)(9)	At the conclusion of, or during, the hearing, the hearing officer may conclude that <b>additional information</b> is necessary for the determination of the protest. Within 30 days after the hearing, the department shall provide a letter to the taxpayer, or the taxpayer's representative, that details the additional information <b>that</b> the hearing officer <b>needs</b> . The taxpayer, or the taxpayer's representative, shall be given 30 days from the date of the letter, or such other reasonable time as the taxpayer, or the taxpayer's representative, and the hearing officer may agree to, for	At the conclusion of, or during, the hearing, the hearing officer may conclude <b>the information requested, but not provided, during the audit</b> is necessary for the determination of the protest. <b>The hearing officer may request this information orally during the hearing.</b> Within 30 days after the hearing, the department shall provide a letter to the taxpayer, or the taxpayer's representative, that details the additional information that the hearing officer needs. The taxpayer, or the taxpayer's representative, shall be given 30 days from

		<p>submission of such information upon request. The taxpayer shall receive one extension of 15 days to submit any requested information. Additional or longer extensions may be granted. Failure to submit requested information could result in the protest being decided by resolving questions of fact to which the requests relate against the taxpayer. In subsequent proceedings, a taxpayer's failure to provide a timely and complete response may give rise to the department's assertion that the taxpayer failed to exhaust administrative remedies. For purposes of this subsection, a written statement by the taxpayer that information requested does or did not exist will be considered a complete response.</p>	<p>the date of the letter, or such other reasonable time as the taxpayer, or the taxpayer's representative, and the hearing officer may agree to, for submission of such information upon request. The taxpayer shall receive one extension of 15 days to submit any requested information. Additional or longer extensions may be granted <b>with the approval of the Chief Counsel, or the Assistant Executive Officer, Audit Branch.</b> Failure to submit requested information could result in the protest being decided by resolving questions of fact to which the requests relate against the taxpayer. In subsequent proceedings, a taxpayer's failure to provide a timely and complete response may give rise to the department's assertion that the taxpayer failed to exhaust administrative remedies. For purposes of this subsection, a written statement by the taxpayer that information requested does or did not exist will be considered a complete response.</p>
18b	(h)(9)	<p>At the conclusion of, or during, the hearing, the hearing officer may <b>conclude</b> that additional information <b>is necessary for the determination of the protest.</b> Within 30 days after the hearing, the department shall provide a letter to the taxpayer, or the taxpayer's representative, that details the additional information that the hearing officer needs. The taxpayer, or the taxpayer's representative, shall be given 30 days from the date of the letter, or such other reasonable time as the taxpayer, or the taxpayer's representative, and the hearing officer may agree to, for submission of such information upon request. The taxpayer shall receive one extension of 15 days to submit any requested information. Additional or longer extensions may be granted. <b>Failure to submit requested information could result in the protest being decided by resolving questions of fact to which the requests relate against</b></p>	<p>At the conclusion of, or during, the hearing, the hearing officer may <b>request</b> that additional information <b>relevant to any new or additional grounds raised by the taxpayer in the protest. In no event shall the hearing officer be authorized to request information for the purposed of establishing new or alternative grounds of assessment by the department.</b> Within 30 days after the hearing, the department shall provide a letter to the taxpayer, or the taxpayer's representative, that details the additional information <b>requested by the hearing officer and the relevancy of the information requested to the resolution of the protest. However, it is not necessary that the taxpayer create documents that never existed in its records and no inference shall be drawn from the fact that the taxpayer never maintained records or information</b></p>

		the taxpayer. In subsequent proceedings, a taxpayer's failure to provide a timely and complete response may give rise to the department's assertion that the taxpayer failed to exhaust administrative remedies. For purposes of this subsection, a written statement by the taxpayer that information requested does or did not exist will be considered a complete response.	<b>requested by the hearing officer.</b> The taxpayer, or the taxpayer's representative, shall be given 30 days from the date of the letter, or such other reasonable time as the taxpayer, or the taxpayer's representative, and the hearing officer may agree to, for submission of such information upon request. The taxpayer shall receive one extension of 15 days to submit any requested information. Additional or longer extensions may be granted.
19	(h)(10)	<p>The hearing officer shall have the authority to terminate an oral hearing. An oral hearing shall be terminated only after the hearing officer has provided a notice to the taxpayer, or the taxpayer's representative, including the reasons for termination of the hearing. <b>Grounds for terminating an oral hearing include, but are not limited to:</b></p> <p><b>(A) the taxpayer, the taxpayer's representative, or any other individual, persist in making repetitious or irrelevant discussions of legal or technical points or issues, or attempts to raise issues or points not contained in the original protest as allowed to be amended or perfected pursuant to this regulation and Regulation section 19041, or</b></p> <p><b>(B) the taxpayer, the taxpayer's representative, or any other individual permitted to be at the hearing by the taxpayer, behaves in a disruptive manner.</b></p>	The hearing officer shall have the authority to terminate an oral hearing. An oral hearing shall be terminated only after the hearing officer has provided a notice to the taxpayer, or the taxpayer's representative, including the reasons for termination of the hearing. <b>An oral hearing may be terminated only as a last resort, to preserve public safety, and shall not be terminated based on testimony a taxpayer wishes to submit or any criticisms that that taxpayer may have of the department.</b>
20	(h)(11)	<p>A report of hearing may be prepared for internal use. The department <b>normally will not</b> provide the taxpayer, or the</p> <p>taxpayer's representative, with a copy of the report prepared by the hearing officer.</p>	<p>A report of hearing may be prepared for internal use. The department <b>shall, on request</b> provide the taxpayer, or the</p> <p>taxpayer's representative, with a copy of the report prepared by the hearing officer.</p>
21	(h)(12)	Unless expressly waived by the taxpayer, or the taxpayer's	Unless expressly waived by the taxpayer, or the

		<p>representative, the department shall, after the submission of any requested information or other materials, mail to the taxpayer, or the taxpayer's representative, the recommendation of the hearing officer with respect to the protest. The taxpayer, or the taxpayer's representative, shall be given 30 days to respond to the recommendation of the hearing officer. Thereafter, the department shall make a determination on the protest. The recommendation of the hearing officer may be treated as the letter of determination and shall be issued in accordance with subsection (h)(2) of Regulation 19041. See Regulation section 19041(h).</p>	<p>taxpayer's representative, the department shall, after the submission of any requested information or other materials <b>as permitted herein, and within 90 days of the hearing</b>, mail to the taxpayer, or the taxpayer's representative, the recommendation of the hearing officer with respect to the protest. The taxpayer, or the taxpayer's representative, shall be given 30 days to respond to the recommendation of the hearing officer. Thereafter, the department shall make a determination on the protest. The recommendation of the hearing officer may be treated as the letter of determination and shall be issued in accordance with subsection (h)(2) of Regulation 19041. See Regulation section 19041(h).</p>
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